



Medical Certifications Under the Family and Medical Leave Act and Americans with Disabilities Act As Amended


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Different Rules for Different Laws




- GINA
- HIPAA
- ADAAA
- FMLA




First A Quick FMLA Refresher

- Enacted to give qualified individuals up to 12 weeks of protected leave for qualifying condition:
 - birth/care newborn,
 - adoption/foster placement,
 - serious health condition of a family member
 - serious health condition of the employee.
 - any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty;"




Military Caregiver Leave

Twenty-six workweeks of leave during a single 12-month period to care for a covered service member with a serious injury or illness if the eligible employee is the service member's spouse, son, daughter, parent, or next of Kin.



ADAAA

- A qualified employee or applicant with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question.
- An employer is required to make a reasonable accommodation to the known disability of a qualified applicant or employee
- Reasonable accommodations are adjustments or modifications provided by an employer to enable people with disabilities to enjoy equal employment opportunities.



Differences and Similarities

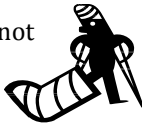
ADAA	FMLA
Permanent Conditions	Temporary Conditions
Inquiry into condition is less restricted.	Inquiry into condition is restricted.
Can require time off or reduced work schedule.	Can require time off or reduced work schedule.
EEOC	USDOL
Can be concurrent with workers compensation	Can be concurrent with workers compensation

First question – Do you need FMLA Health Condition Certification ?

- An employer with 50 or more employees within a 75 mile radius
- Employee has been employed for at least 12 months and
- Employee has worked 1250 hours within the last 12 months

The need is pretty obvious

- If the request is consistent with obvious medical condition there may be no need to ask for a formal medical certification.
- Medical certification is not required by the FMLA.



An Informed decision



- Employer is entitled to enough information on the initial request to make an initial decision on whether the employee is entitled to FMLA leave or not, without the need for a formal medical certification

Such As

- How much time is being requested?
- Continuous or intermittent?
- If intermittent, what is being requested?
- What is the medical condition or reason for the request?

Failure to provide this information may result in the delay or denial of FMLA protected leave.

What about workers comp?

- If the employee is off work due to a workers compensation covered injury or sickness, the employer can count those days off against the employee's 12 week entitlement.
- Must inform the employee of the fact that their work related absence is being counted against their FMLA entitlement.


To Pay or Not to Pay



- Generally an employer may require an employee to use paid vacation and sick leave while on FMLA- but this does not apply if receiving workers compensation benefits.

	<p>Medical certification</p> <p>DEPARTMENT OF LABOR FORM WH-380E</p>
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<p>DON'T TRY TO REINVENT THE WHEEL</p> <ul style="list-style-type: none"> • Restrictions on what and how often you can request medical information. • Department of Labor enforces the FMLA, so use of their form avoids improper inquiries. • Provide a copy of the copy of the employee's current position description.

	<p>Three Strikes and Somebody's Out!</p> <ul style="list-style-type: none"> • If the employer has doubts concerning the medical certification and need for FMLA leave, they may request a second opinion. • By a doctor of the employer's choosing, but not one they regularly use. Employee must cooperate. Employer's expense. • A third opinion is available, but parties must agree on the doctor and result is binding on both parties.
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Other methods of gathering medical information are limited.

Clarification: allows for questions concerning clarification of what is in the 380E.

Recertification: when employee's absences are inconsistent with medical care providers estimations.

IME'S

Special issues come into play when the employee is on FMLA and Workers Compensation leave.

- IME's that are legitimate, i.e. would be expected in the type of work comp claim involved, are probably going to be OK. Must be related to the work related injury or illness.
- IME's that appear to an attempt to avoid FMLA restrictions or inquire into none related disabilities, can lead to trouble.

Multiple Requests



- Requests for different reasons or conditions during a period of approved FMLA leave do not extend the 12 week maximum or start a new year.
- Certifications for new conditions or reasons may be required however.

Other considerations:

- Employee must still comply with “reporting” requirements.
- “Patterns” can justify recertification and possible disciplinary action (but be vewry, vewry, cawreful)
- Is this really an ADAA issue? FMLA is intended for temporary rather than permanent conditions.

ADAAA

- Less emphasis on whether and individual is covered by the act by broadening coverage.
 - Mitigating appliances or medications are no longer considered in determining disability.
- More focus on whether there was actually discrimination.

When to inquire

- Job interview questions that go directly to whether or not an individual has a disability are prohibited.
- May ask about ability to perform specific functions of the job.
- If employee claims a disability after hiring you can make inquiry in order to evaluate reasonable accommodations.

How about pre-employment medical examinations?

- job offer may be conditioned on the results of a medical examination, but only if the examination is required for all entering employees in similar jobs.
- Medical examinations of employees must be job related and consistent with the employer's business needs.
- Failure of a pre-employment medical exam because of a qualifying disability does not entitle the employer to deny employment, but opens the door to reasonable accommodations.


Intermittent leave



Can be downright frustrating!

Some suggestions


- Remember, when an employee requests FMLA leave they must give you enough information with their request to allow you to make an initial determination. Hold them to it.
- Don't hand them the medical certification form as the "initial application".
- If the certification is vague ask the employee for clarification.



- Watch for patterns, Friday, Monday, busiest day of the week, etc.
- Exceeding medical recommendations.
- Is this really an ADAA reasonable accommodation issue?


FMLA	ADAA
<ul style="list-style-type: none"> • "an illness, injury, impairment, or physical or mental condition that involves . . . [i]npatient care . . . or [c]ontinuing treatment by a health care provider." 	<ul style="list-style-type: none"> • "disability" is an impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment.

fmla-adaa-or both?



**Medical Record Fees
K.S.A. 65-4971(b)**

- Repealed by Session Laws of 2011, ch. 114, § 100, eff. July 1, 2011



Questions???????
